

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

CAROLYN HERZ SRIVASTAVA,

Plaintiff,

v.

BLAKEFORD AT GREEN HILLS  
CORPORATION, et al.,

Defendants.

CAUSE NO. 3:10-cv-00082  
JUDGE HAYNES

**DR. PESCOVITZ'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Pursuant to Fed. R. Civ. Pro. 12(b)(6) and Fed. R. Civ. Pro. 12(b)(2), Defendant Ora Hirsch Pescovitz ("Dr. Pescovitz") respectfully moves this Court to dismiss the Complaint and Jury Demand (the "Complaint") of Carolyn Herz Srivastava ("Srivastava") for failure to state claims upon which relief can be granted and for lack of jurisdiction over her person. In support hereof, and in addition to the contemporaneously filed Dr. Pescovitz's Brief Supporting Motion to Dismiss, Dr. Pescovitz states as follows:

1. Since 1997, by her own count, Srivastava has filed over thirty (30) frivolous lawsuits in numerous state and federal courts in Indiana against Dr. Pescovitz and numerous other individuals.
2. This action is only the latest in a long series of baseless, libelous and repetitive pleadings against Dr. Pescovitz and many others.
3. Although Srivastava has continued to file complaints, none of her lawsuits has been successful. As a result of Srivastava's relentless litigious history, four (4) different Federal and State Court Judges, one of whom is named as a defendant in this action, have ordered that Srivastava obtain leave of their respective Courts before filing any additional lawsuits:

- a. On July 21, 2003, Marion (County, Indiana) Superior Court Judge Steven H. Frank ruled, at the conclusion of *Srivastava v. Fulkerson, et al.*, Marion (County, Indiana) Superior Court, Cause No. 49D01-0301-CT-000143, and based upon *Parks v. State of Indiana*, 789 N.E.2d 40 (Ind.Ct.App. 2003), that any Srivastava complaint against any of the parties named in Fulkerson was subject to his approval prior to filing. A true and accurate copy of Judge Frank's Order is attached hereto as **Exhibit "A"**.
- b. On September 30, 2004, then-United States District Court Judge David F. Hamilton, in *Srivastava v. Marion County Election Board, et al.*, United States District Court, Southern District of Indiana, Indianapolis Division, Cause No. 1:03-cv-1447-DFH-VSS, citing Srivastava's "uniformly unsuccessful . . . record of relentlessly frivolous *pro se* litigation in [federal] court and in the state courts in Marion County," ordered that any action, paper or other material filed by Srivastava in United States District Court must be screened by the Court before leave to file same is granted. A true and accurate copy of Judge Hamilton's Entry on Motion for Sanctions and Order Requiring Screening of Plaintiff's Future Filings in this Court of September 30, 2004 (sometimes, the "Entry"), is attached hereto as **Exhibit "B"**.
- c. On January 21, 2005, Marion (County, Indiana) Superior Court Judge Kenneth H. Johnson ruled, in *Srivastava v. Pescovitz*, Marion Superior Court, Cause No. 49D02-0411-CT-002095, that Srivastava ". . . owing to her history of filing repetitive, libelous, frivolous and baseless complaints in this Court, may not initiate any further lawsuits herein until her complaint is screened by this Court and leave to file same is granted." A true and accurate copy of Judge Johnson's Order is attached hereto as **Exhibit "C"**.
- d. On November 8, 2005, United States District Court Judge Larry J. McKinney ruled, in *Srivastava v. Daniels*, United States District Court for the Southern District of Indiana, Case No. 1:05-cv-00835-LJM-WTL, that any action in which Srivastava asserts a claim (complaint, counterclaim, cross-claim), will be STAYED until a review of the claim is made comparable to the review required in Judge Hamilton's September 30, 2004 screening order. A true and accurate copy of Judge McKinney's Order is attached hereto as **Exhibit "D"**.

4. Dr. Pescovitz respectfully directs the Court's attention to the attached Entry of then-District Judge Hamilton, who has since been elevated to the United States Court of Appeals for the Seventh Circuit, and who is also one of the defendants in this case, especially pp. 4-7. Judge Hamilton's analysis is persuasive and his summary of just a few of Srivastava's claims there at issue, some of which are alleged **again** in this Complaint, will give the Court an idea of the nature of Srivastava's claims herein.

5. Since Srivastava has been enjoined from commencing any actions in the Marion County, Indiana, Courts and the United States District for the Southern District of Indiana, Indianapolis Division, without Court approval, she has attempted to file lawsuits in other venues, with the same central theme and against substantially the same parties as the ones precipitating the Screening Orders described above. All of these filings typify Srivastava's delusional, frivolous, scandalous, mean-spirited and vulgar abuse of the judicial process.

6. On September 11, 2008, Srivastava filed another substantially similar Complaint *pro se* in the Boone County (Indiana) Circuit Court. She cited Boone County as the proper venue at that time, although only one of the approximately 70 defendants named in her Complaint was a Boone County resident. The vast majority of defendants were Marion County judges, government officials, businesses and residents. On September 15, 2008, the defendant Charlene Pfenninger filed her Motion for Change of Preferred Venue. The trial court entered an Order transferring the case to Marion County on October 2, 2008, pending payment by Srivastava of the costs of the transfer within twenty (20) days, and telling her that the Court would dismiss the action without prejudice if she did not pay the costs of transfer. The fees ordered by the Order of October 2, 2008, were not paid by Srivastava, and the trial court therefore dismissed that Complaint without prejudice on October 23, 2008.

7. During the time that transfer to Marion County was pending, Srivastava filed, on October 11, 2008, in Boone Circuit Court a Motion to Transfer This Case to Lake County, citing Lake County as the proper venue due to two defendants allegedly conducting business in Lake County, as she has stated in her current complaint. That motion was denied.

8. Although Srivastava continues to file appeals and motions for relief from judgment in the Boone Circuit Court and the United States District for the Southern District of

Indiana, Indianapolis Division, with her most recent motion being filed on January 22, 2010, her motions and appeals continue to be swiftly denied.

9. In her most recent Indiana lawsuit, now pending in the United States District Court for the Northern District of Indiana, Hammond Division, Cause No. 2:10-CV-053-PPS, PRC, Srivastava has sued Judge Hamilton, the Governor of Indiana, The Chief Justice of the Indiana Supreme Court, officials of the University of Florida and Indiana University and at least a half-dozen other judges and public officials. This lawsuit is more of the same.

10. Based upon the foregoing, Srivastava has failed to state claims upon which relief can be granted against Dr. Pescovitz under Fed. R. Civ. Pro. 12(b)(6) in that her Complaint does not allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007). *See also Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), in which the Supreme Court held that the plaintiff must "plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *id.*, utilizing "its judicial experience and common sense" in deciding whether an alleged element is plausible and not merely possible. *Id.*, at 1940. Based on *Twombly*, *Iqbal* and what is set forth above and in the attachments, Dr. Pescovitz is entitled to have Srivastava's Complaint dismissed.

11. Further, the Complaint and this action do not arise out of any acts committed by Dr. Pescovitz that would give rise to this Court's assertion of jurisdiction over her person under Fed. R. Civ. Pro. 4(e)(1), or that is consistent with the Constitution of the United States. Dr. Pescovitz, a former colleague of Srivastava's at Indiana University in Bloomington, IN, is currently a resident of the state of Michigan and a faculty member of the University of Michigan. She holds the position of Executive Vice President for Medical Affairs and Professor of Pediatrics and Communicable Diseases in the University of Michigan Medical School. She is also Chief Executive Officer of the University of Michigan Health System. She does no business

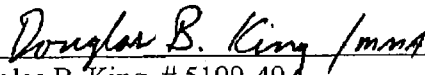
in the State of Tennessee, nor has she committed any acts in this State that would give this Court jurisdiction over their persons under Fed. R. Civ. Pro. 4(e)(1) or that would be consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

12. Based upon the foregoing, this Court lacks jurisdiction over the person of Dr. Pescovitz under Fed. R. Civ. Pro. 12(b)(2), and the Complaint and this action should therefore be dismissed as against her for that reason in addition to the failure to state a claim upon which relief can be granted.

WHEREFORE, Dr. Pescovitz respectfully prays that this Court dismiss Srivastava's Complaint and Jury Demand, and for all other proper relief.

Dated this 22<sup>nd</sup> day of February, 2010.

Respectfully submitted,

  
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Douglas B. King, # 5199-49  
Motion for admission *pro hac vice* filed

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2010, a copy of the foregoing was mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

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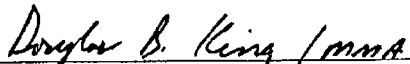
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